

MRS. ELBA HAVERSTICK CASH

FEBRUARY 27, 1958.—Committed to the Committee of the Whole House and ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 6963]

The Committee on the Judiciary, to whom was referred the bill (H. R. 6963) for the relief of Mrs. Elba Haverstick Cash, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Page 1, line 6, strike the amount "\$25,000" and insert "\$21,700".

Page 1, line 9, strike "May" and insert "March".

Page 2, line 2, after the word "Provided" insert:

That the enactment of this Act shall not alter Mrs. Elba Haverstick Cash's right to insurance payments as the beneficiary of a policy of National Service Life Insurance on the life of her son, Ralph Raymond Haverstick: *And provided further,*"

PURPOSE

The purpose of the proposed legislation is to pay Mrs. Elba Haverstick Cash, of St. Louis, Mo., \$21,700 in full settlement of her claims against the United States as a result of the death of her son, Ralph Raymond Haverstick, from injuries he sustained while a patient in a Veterans' Administration facility.

STATEMENT

Mrs. Elba Haverstick Cash's son, Ralph Raymond Haverstick, was a veteran of two periods of service in the Armed Forces of the United States. His last period of service extended from December 27, 1942, to May 29, 1943. He was given a medical discharge with a diagnosis of dementia praecox, and on October 9, 1943, he was admitted to the

Veterans' Administration hospital at Danville, Ill. He remained a patient in Veterans' Administration facilities to the date of his death on March 30, 1955.

The circumstances surrounding Mr. Haverstick's injuries are outlined as follows in the Veterans' Administration report to this committee on H. R. 6963:

On February 23, 1955, attendants in the Veterans' Administration hospital, Danville, Ill., reported that Mr. Haverstick had engaged in a fight with another patient. The ward physician was called, and it was determined that the veteran had sustained severe brain injuries. Mr. Haverstick was transferred to the Veterans' Administration hospital, Chicago, Ill., where an operation was performed. The veteran subsequently died, as the result of his injuries, on March 30, 1955.

Because of suspicious circumstances noted as the result of an investigation conducted by the Veterans' Administration, the assistance of the Federal Bureau of Investigation was requested, for further investigation. Extensive inquiry disclosed that the veteran's injuries resulted from mistreatment by hospital attendants, in attempting, after his refusal, to effect a necessary change of clothing.

The mistreatment referred to occurred on February 23, 1955, when attendants attempted to change the veteran's clothing. The material submitted to the committee indicates that Mr. Haverstick was kicked several times in the course of the struggle. After the struggle, he was strapped to a bench. At that time, apparently, the attendants were not aware of the seriousness of Mr. Haverstick's injuries, and it was about an hour later that one of the attendants reported to a nurse that Haverstick was unconscious. The veteran was then removed to a bed, and the doctor notified. That doctor found that the patient was in a serious condition and directed that the doctor in charge of the hospital and the ward doctor be called. It was determined that the man was in shock and that his was an emergency case because of a bad injury. Mr. Haverstick was transferred to the Veterans' Administration hospital in Chicago for surgery, as outlined in the Veterans' Administration report.

The circumstances of this case are such that this committee has concluded that this matter is a proper subject of legislative relief. The Veterans' Administration has indicated in its report that is opposed to special legislative treatment in this case, because benefits are currently being paid Mrs. Cash at the rate of \$75 a month under the authority of section 501 (a) of title 38, United States Code. That report further notes that she is receiving payments as the beneficiary of a \$5,000 national service life insurance policy. This committee has determined that the lump-sum payment made to Mrs. Cash should be in lieu of the monthly death-compensation benefit, but that the payments under the national service life insurance policy should not be affected. Accordingly, the committee recommends that the bill be amended to make it clear that Mrs. Cash's right to life-insurance payments will not be affected by the bill's enactment. Further, the committee recommends that the bill be amended to provide for a payment of \$21,700. Accordingly, the committee recommends that the amended bill be considered favorably.

The committee has been advised that an attorney has rendered services in connection with this claim, and, accordingly, the bill carries the customary attorney's-fee proviso.

DEPARTMENT OF JUSTICE,
Washington, November 14, 1957.

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on the bill (H. R. 6963) for the relief of Mrs. Elba Haverstick Cash.

The bill would provide for payment of the sum of \$25,000 to Mrs. Elba Haverstick Cash in full settlement of all of her claims against the United States arising out of the death of her son from injuries sustained by him while a patient in a Veterans' Administration facility. The bill further provides that any payment in excess of 10 percent of the amount appropriated for services rendered in connection with the claim shall be unlawful, and any violation of such provision shall be deemed a misdemeanor and, upon conviction thereof, shall carry a fine of not exceeding \$1,000.

From the information contained in the files of the Department of Justice concerning this matter, it appears that Ralph Raymond Haverstick, 35 years old, had been an inmate of the Danville, Ill., Veterans' Administration hospital for 12 years. As a schizophrenic, he was a patient in the ward for acutely disturbed patients. On the morning of February 23, 1955, in the course of an altercation with four hospital attendants about changing his clothing, Haverstick suffered severe brain injuries, from the results of which he subsequently died on March 30, 1955. The original testimony of the four attendants concerning the incident was to the effect that Haverstick and another patient in the acutely disturbed ward had engaged in a fight, during which Haverstick was kicked about the head, neck, and shoulders by the other patient. Discrepancies in this testimony led to a full investigation of the matter by the FBI and, subsequently to the presentation of a case against the four attendants to a Federal grand jury in April 1955. This presentation resulted in a "no true bill." Subsequent to this, three of the hospital attendants recanted their previous testimony, stating that it had been false, and that Haverstick had been kicked in the head and back by the fourth attendant, Robert White Gassaway. In May 1955, a Federal grand jury returned an indictment against Gassaway, charging him with assault and manslaughter under title 18, United States Code, sections 113 and 1112, and a civil-rights count. Gassaway was tried in the District Court for the Eastern District of Illinois on October 11, 1955. The jury returned a verdict of "not guilty." No transcript of the trial testimony was made.

The claim embodied in this bill is based upon assault and battery and, as such, is not cognizable under the Federal Tort Claims Act, which excepts such claims from the purview of the act (28 U. S. C. 2680 (h)).

Whether the bill should be enacted presents a question of policy on which the Department makes no recommendation.

As noted above, no transcript of the record of trial was made. Should the committee so desire, it may, of course, obtain such a transcript from the court reporter. In the absence of such a transcript, the salient points of the witnesses' statements as given to the FBI have been set out herein.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

W. WILSON WHITE,
Assistant Attorney General.

VETERANS' ADMINISTRATION,
Washington, D. C., July 24, 1957.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.*

DEAR MR. CELLER: Further reference is made to your letter requesting a report by the Veterans' Administration relative to H. R. 6963, 85th Congress, a bill for the relief of Mrs. Elba Haverstick Cash, which provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Mrs. Elba Haverstick Cash, St. Louis, Missouri, the sum of \$25,000. The payment of such sum shall be in full settlement of all claims of the said Mrs. Elba Haverstick Cash against the United States arising out of the death on May 30, 1955, of her son, Ralph Raymond Haverstick (Veterans' Administration claim numbered XC-3227005) from injuries sustained by him while a patient in a Veterans' Administration facility. This claim is not cognizable under the Federal Tort Claims Act: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

The records disclose that Ralph Raymond Haverstick (XC-3227005) served in the Armed Forces of the United States from October 10, 1939, to March 21, 1940, and again from December 27, 1942, to May 29, 1943. He received a medical discharge from both periods of service with a diagnosis of dementia praecox.

Based on his claim for service-connected disability-compensation benefits, Mr. Haverstick was found to be 30 percent disabled on account of dementia praecox, and was awarded compensation therefor. On October 9, 1943, the veteran was admitted to the Veterans' Administration hospital, Danville, Ill., with a diagnosis of dementia praecox, hebephrenic type. He remained a patient in Veterans' Administration facilities to the date of his death, March 30, 1955 (referred to in the bill as May 30, 1955). During that period, he was continuously rated as totally disabled for compensation purposes and, for most of that period, his mother, Mrs. Elba Haverstick (or, following her remarriage, Mrs. Elba Haverstick Cash), the claimant of H. R. 6963, was paid disability compensation in varying amounts,

ranging from \$138 to \$190 per month, as guardian of the person and estate of Ralph Raymond Haverstick.

On February 23, 1955, attendants in the Veterans' Administration hospital, Danville, Ill., reported that Mr. Haverstick had engaged in a fight with another patient. The ward physician was called, and it was determined that the veteran had sustained severe brain injuries. Mr. Haverstick was transferred to the Veterans' Administration hospital, Chicago, Ill., where an operation was performed. The veteran subsequently died, as the result of his injuries, on March 30, 1955.

Because of suspicious circumstances noted as the result of an investigation conducted by the Veterans' Administration, the assistance of the Federal Bureau of Investigation was requested, for further investigation. Extensive inquiry disclosed that the veteran's injuries resulted from mistreatment by hospital attendants, in attempting, after his refusal, to effect a necessary change of clothing.

The case was presented to a Federal grand jury at Danville, Ill., which returned a "no true bill." Subsequent developments in the case led to the arrest of 3 hospital attendants and, on May 3, 1955, a Federal grand jury rendered an indictment against 1 of the attendants, Robert Gassaway, charging him with voluntary manslaughter, involuntary manslaughter, assault, and violation of civil rights, but exonerated the other attendants. Mr. Gassaway was tried before a jury in the United States district court, Danville, Ill., and on October 14, 1955, was found not guilty on all counts. Following his acquittal, removal charges were initiated by the manager of the hospital because of patient abuse, but, before they were processed, Mr. Gassaway resigned his position on October 19, 1955. A second hospital attendant was reduced in grade, relieved of supervisory responsibilities, and restricted from ever exercising them in the future; the third attendant was reinstructed in this aspect of patient care; and a fourth was reprimanded.

On April 11, 1955, the claimant of H. R. 6963 filed a claim for death-compensation benefits as the dependent mother of the veteran. Section 31 of the act of March 28, 1934 (48 Stat. 526; 38 U. S. C. 501 (a)), provides, in part:

"Sec. 31. Where any veteran sufferers or has suffered an injury, or an aggravation of any existing injury, as the result of training, hospitalization, or medical or surgical treatment, awarded him under any of the laws granting monetary or other benefits to World War veterans, or as the result of having submitted to examination under authority of the War Risk Insurance Act or the World War Veterans' Act, 1924, as amended, and not the result of his misconduct, and such injury or aggravation results in additional disability to or the death of such veteran, the benefits of Public Law Numbered 2, of Public Law Numbered 78, and of this title shall be awarded in the same manner as if such disability, aggravation, or death were service connected within the meaning of such laws, * * *"

By decision dated January 30, 1956, the office of original jurisdiction held that the veteran's death was the result of injuries received while being hospitalized in a Veterans' Administration hospital. Payment of death-compensation benefits was not commenced, however, until April 10, 1957, the date of receipt of proof of Mrs. Cash's dependency. She is currently receiving death compensation of \$75 per month. At